INFANTS—UNBORN CHILDREN—RIGHT TO MAINTAIN AN ACTION FOR INJURIES.—While the plaintiff was *en ventre sa mère* and before she could have been born viable, she was injured by an injury to her mother then a passenger on the defendant's electric car. The plaintiff now sues to recover for the injuries she sustained. *Held*, the plaintiff cannot recover. *Lipp* v. *Milwaukee Ry. & Light Co.* (Wis.), 159 N. W. 916.

Where it would be to the child's benefit to be considered as being born or living while still *en ventre sa mère*, it is so considered for many purposes both by the civil and common law. *Villar* v. *Gilbey*, (1907) A. C. 139. Thus, such a child is considered as "born" in the life time of the testatrix and "living" at its father's death for the purpose of taking a legacy under a will. *Gibson v. Gibson*, 2 Freem. Chy. 223; *Trower* v. *Butts*, 1 S. & S. 181. Also, such a child can take under a devise to a certain class of persons "living" at the testator's decease. *Doe* v. *Clarke*, 2 H. Bl. 399. It is said that the basis of the rule is that the potential existence of the child places it within the reason and motive of the gift. *In re Salaman*, (1908) 1 Ch. D. 4. A child *en ventre sa mère* is also within the purview of the Statute of Distributions. *Wallis* v. *Hodson*, 2 Atk. 114. And it can recover, under Lord Campbell's Act, for the wrongful death of its father. *State* v. *Soale*, 36 Ind. App. 73, 74 N. E. 1111; *The George and Richard*, L. R. 3 Adm. 466. Where marriage and the birth of issue is necessary to revoke a will made prior to marriage, it is not necessary that the issue be actually born before the testator's death. *Doe* v. *Lancashire*, 5 T. R. 49.

According to the common law, if a person kill a child *en ventre sa mère*, it is a great misprison but no murder; but if the child die after birth from injuries received while in its mother's womb it is murder, for in law it is considered a reasonable creature, *in rerum naturæ*, when it is born alive. 3 COKE, INST. 50. Nevertheless, the courts have quite consistently refused to allow an infant to recover for injuries received before its birth. *Alliare* v. *St. Luke's Hospital*, 184 Ill. 359, 56 N. E. 638, 48 L. R. A. 225, 75 Am. St. Rep. 176; *Nugent* v. *Brooklyn Heights R. Co.*, 154 App. Div. 667, 139 N. Y. Supp. 367. See *Walker* v. *Great N. Ry. Co.*, 28 L. R. Ir. 69. But surely one willfully injured while still a foetus has a right of action against the wrongdoer. See *Walker* v. *Great N. Ry. Co.*, *supra*. An unborn child should surely be entitled to have its body as well as its property protected. See *Nugent* v. *Brooklyn Heights Ry. Co.*, *supra*. Therefore, when the child can be said to be a separate entity distinct from its mother, that is, when it could have been born viable, it seems that the infant should be allowed to maintain an action for a negligent injury to it. See dissenting opinion in *Allaire* v. *St. Luke's Hospital*, *supra*. But if an infant is so little advanced in foetal life that it could not live if separated from its mother, it must still be considered a part of her, and any injury to the child is merged into the injury to the mother. *Gorman* v. *Budlong*, 23 R. I. 169, 49 Atl. 704, 55 L. R. A. 118, 91 Am. St. Rep. 629; *Buel* v. *United Railways Co.*, 248 Mo. 126, 154 S. W. 71, 45 L. R. A. (N. S.) 625. Thus, when an injury causes the premature birth of a child which dies soon afterwards on account of having been separated from its mother, its administrator can maintain no action for

its wrongful death. *Dietrich* v. *Northampton,* 138 Mass. 14, 52 Am. Rep. 242. As the plaintiff in the principal case could not have been born viable when the injury occurred, the decision seems sound.

MASTER AND SERVANT—DUTY TO INSTRUCT—HOW TO AVOID INJURY.—Plaintiff's intestate was employed by defendant as a telephone lineman. Telephone lines were being put up on cross-arms to poles upon which high power electric wires were stretched. He was set to work "clipping cables," after being shown how to make only one clipping by a fellow employee; he was, however, warned two or three times that the wires were live wires and that they would kill him if he came in contact with them. While engaged in making his first clipping without assistance, he touched one of the electric wires and was instantly killed. *Held,* the defendant is not liable. *Bristol Telephone Co.* v. *Stockton's Adm'r.* (Va.), 90 S. E. 636.

Stated in the most general terms, the extent of the master's obligation in regard to imparting information to a servant is to give him "such instruction as will enable him to avoid injury." 1 LABATT, MASTER AND SERVANT, § 252. See *Atlas Engine Works* v. *Randall,* 100 Ind. 293, 50 Am. Rep. 798. Where a person of ordinary intelligence is employed to do dangerous work with which he is unfamiliar, a mere warning that the work is dangerous and that he must be careful, in the absence of any instruction how to avoid the danger involved, is not sufficient to relieve the employer of liability. *American Strawboard Co.* v. *Foust,* 12 Ind. App. 421, 39 N. E. 891. Thus, where a railroad company employs one unfamiliar with the work of a brakeman, it was its duty not only to warn him of the danger incident to the work, but to show him how the work might be done safely. *Reynolds* v. *Boston, etc., Ry. Co.,* 64 Vt. 66, 24 Atl. 134. Again, where a servant is put to work painting near electric machinery, and is injured while so engaged, on account of a failure to instruct him how to avoid the danger involved, the master is liable. *Dirken* v. *Great N. Paper Co.,* 110 Me. 374, 86 Atl. 320, Ann. Cas., 1914D, 396. And where an inexperienced servant is employed at dangerous machinery the master is bound to give him such instruction as will cause him to appreciate and understand the danger of the employment. *Quinn* v. *Electric Laundry Co.,* 155 Cal. 500, 101 Pac. 794, 17 Ann. Cas. 1100.

Whether the servant has been sufficiently instructed is primarily a question for the jury, and their findings should not be interfered with where different inferences may be drawn from the evidence. 1 LABATT, MASTER AND SERVANT, § 252; *Reynolds* v. *Boston, etc., Ry. Co., supra; McDougall* v. *Ashland Sulphite-Fibre Co.,* 97 Wis. 382, 73 N. W. 327; *Kochman* v. *Chase,* 32 App. Div. 630, 52 N. Y. Supp. 740. See *Fisher's Adm'r.* v. *Chesapeake & O. Ry. Co.,* 104 Va. 635, 52 S. E. 373, 2 L. R. A. (N. S.) 954; *Wood's Adm'r.* v. *Southern Ry. Co.,* 104 Va. 650, 52 S. E. 371. And if the evidence is such that a jury might have found a verdict for the demurree, then on a demurrer to the evidence, the court must so find. *Citizen's Bank* v. *Taylor,* 104 Va. 164, 51 S. E. 159; *Milton's Adm'r.* v. *Norfolk & W. Ry. Co.,* 108 Va. 752, 62 S. E. 960.

In the principal case, the court perhaps overlooked the distinction be-